

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL MANLICLIC NAVARRO,

No. C 08-0241 WHA (PR)

Petitioner,

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

vs.

BEN CURRY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

Venue is proper in this district because the conviction was obtained in Alameda County, which is in this district. *See* 28 U.S.C. § 2241(d).

DISCUSSION

A. STANDARD OF REVIEW

A district court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief which are available to the petitioner ... and shall

1 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of
2 the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not
3 sufficient, for the petition is expected to state facts that point to a ‘real possibility of
4 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
5 688, 689 (1st Cir. 1970). “Habeas petitions which appear on their face to be legally
6 insufficient are subject to summary dismissal.” *Calderon v. United States Dist. Court*
7 (*Nicolaus*), 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

8 **B. LEGAL CLAIMS**

9 In 2003 an Alameda County jury convicted petitioner of arson of an inhabited dwelling.
10 He was sentenced to ten years in prison. The conviction was affirmed on appeal by the Court
11 of Appeal of California and the Supreme Court of California denied review.

12 The petition in this consists of pages one through three of the court’s form, plus twenty-
13 nine pages of a typed document. The typed document is headed “California Supreme Court”
14 and is captioned both “Points and Authorities in Support of Motion to Dismiss for Denial of
15 Due Process and I.A.C. Ineffective Assistan[ce] of Counsel” and “Petition for Writ of Habeas
16 Corpus.” The conflict between these two parts of the caption is not explained.

17 The absence of the pages of the court form subsequent to page three means that there are
18 no allegations regarding exhaustion and, because the claims in the non-form portion of the
19 petition are unclear, no clear statement of the issues which petitioner wishes to raise. The
20 petition will be dismissed with leave to file an amended petition on the court’s form.

21 **CONCLUSION**

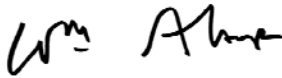
22 1. The petition is **DISMISSED** with leave to amend within thirty days from the date this
23 order is entered. The amendment must (1) be on the court’s form; and (2) include the caption
24 and civil case number used in this order and the words AMENDED PETITION on the first
25 page. Failure to amend within the designated time will result in the dismissal of the case.

26 2. The clerk shall send petitioner two sets of the court’s form packet for prisoner section
27 2254 petitions. Because petitioner has paid the filing fee he need not return the application for
28 leave to proceed in forma pauperis.

1 3. It is petitioner's responsibility to prosecute this case. Petitioner must keep the court
2 informed of any change of address and must comply with the court's orders in a timely fashion.
3 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
4 Federal Rule of Civil Procedure 41(b).

5 **IT IS SO ORDERED.**

6
7 Dated: January 22, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MANUEL M. NAVARRO,

Plaintiff,

v.

BEN CURRY et al,

Defendant.

Case Number: CV08-00241 WHA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Manuel M. Navarro
P-94139/ TD-6L
Correctional Training Facility
PO Box 705
Soledad, CA 93960

w/enclosure

Dated: January 22, 2008

Richard W. Wieking, Clerk
By: D. Toland, Deputy Clerk